



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2012

Mr. Stanton Strickland  
Associate Commissioner  
General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2012-06084

Dear Mr. Strickland: \_\_\_\_\_

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 452063 (TDI# 124659).

The Texas Department of Insurance (the "department") received a request for the Medicare Plan F rate increases charged by Mutual of Omaha for a specified time period.<sup>1</sup> You state the department will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Mutual of Omaha. Accordingly, you notified Mutual of Omaha of the request for information and of its right to submit arguments to this office as to why its submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received arguments against disclosure from Mutual of Omaha. Thus, Mutual of Omaha has not

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<sup>1</sup>We note the department sought clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any of the submitted information on the basis of any proprietary interests Mutual of Omaha may have in the information.

Section 552.137 of the Government Code exempts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>2</sup> Gov’t Code § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold this e-mail address under section 552.137 of the Government Code unless the owner of the e-mail address affirmatively consents to its release under section 552.137(b). As no further exceptions to disclosure are raised, the department must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 452063

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Pamela Bishop  
Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175  
(w/o enclosures)